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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140710571-4571-01]

RIN 0648-BE36

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species;  
Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to establish restrictions on the use of fish aggregating devices (FADs) by U.S. purse seine vessels in the western and central Pacific Ocean. The restrictions would include a prohibition on the use of FADs during January and February and July through September of 2015, and a limit of 3,061 purse seine sets that may be made on FADs in 2015. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by [Insert date 20 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0115, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0115](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0115), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the SUPPLEMENTARY INFORMATION section of this proposed rule.

Copies of the RIR, and the Supplemental Environmental Assessment (SEA) prepared for National Environmental Policy Act (NEPA) purposes, are available at [www.regulations.gov](http://www.regulations.gov) or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032.

#### SUPPLEMENTARY INFORMATION:

##### Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the western and central Pacific Ocean (WCPO), can be found on the WCPFC Web site at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map). The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC includes Members, Cooperating Non-members, and Participating Territories (collectively, CCMs). The United States is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 et seq.), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 et seq.), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

#### WCPFC Decision on Tropical Tunas

At its Tenth Regular Session, in December 2013, the WCPFC adopted CMM 2013-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2013-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the WCPFC. It is a successor to CMM 2012-01, adopted in December 2012. These and other CMMs are available at: [www.wcpfc.int/conservation-and-management-measures](http://www.wcpfc.int/conservation-and-management-measures).

CMM 2013-01’s stated general objective is to ensure that the stocks of bigeye tuna (Thunnus obesus), yellowfin tuna (Thunnus albacares), and skipjack tuna (Katsuwonus pelamis) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM

includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2013-01 went into effect February 4, 2014, and is generally applicable for the 2014-2017 period. Some of its provisions apply to specific periods within the 2014-2017 timeframe, and some of its provisions are contingent on whether the WCPFC makes certain decisions in the future. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number and fishing capacity of vessels, limits on the allowable level of fishing effort, restrictions on the use of FADs, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers. This proposed rule would implement the FAD restrictions for purse seine vessels, and only for 2015. The other provisions of the CMM, and the FAD restrictions for years subsequent to 2015, would be implemented in other rulemakings.

#### Proposed Action

CMM 2013-01 requires CCMs to prohibit their purse seine vessels from setting on FADs in EEZs and on the high seas in the Convention Area between the latitudes of 20° North and 20° South from July 1 through September 30 of each year. For 2014, the CMM further requires CCMs to either prohibit setting on FADs in October or limit the total number of FAD sets in the calendar year by the CCM's purse seine fleet to specified levels. For the United States, the specified level is 2,522 FAD sets. NMFS has already issued FAD-related regulations for 2014 (final rule published May 23, 2013, at 78 FR 30773) that implement the option of prohibiting FAD sets in October, so there is no need for further action for 2014. Again, this proposed rule

would establish restrictions on the use of FADs in 2015 only.

For 2015 through 2017, CMM 2013-01 maintains the prohibition on setting FADs during the months of July-September, so this proposed rule would prohibit the use of FADs in the Convention Area between the latitudes of 20° North and 20° South from July 1 through September 30, 2015. In addition, CCMs are required to either: (1) prohibit their purse seine vessels from setting on FADs in January and February in combination with limiting the number of FAD sets by their purse seine vessels to specified levels (for U.S. purse seine vessels, the specified level is 3,061 FAD sets per year); or (2) limit the number of FAD sets by their purse seine vessels to specified levels (for U.S. purse seine vessels, the specified level is 2,202 per year). In other words, for each calendar year, the United States has the option of a five-month FAD closure in combination with a 3,061 FAD set limit, or a three-month FAD closure in combination with a 2,202 FAD set limit. This proposed rule would implement the former option for 2015—that is, a prohibition on FAD-setting in January and February and July through September of 2015, in combination with a limit of 3,061 FAD sets for 2015. However, for the reason described below, these requirements, if adopted in a final rule, would be made contingent on NMFS issuing a subsequent notice in the Federal Register, announcing that the WCPFC has affirmed its decision with respect to restrictions on the use of FADs for 2015.

Paragraph 15 of CMM 2013-01 states that the FAD-related requirements starting in 2015 (apart from the July-September FAD closure) shall only take effect when the Commission has adopted, at its Eleventh Regular Session, “... arrangements to ensure that this CMM, consistent with the Convention Article 30 2(c), does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS [small island developing States].” Thus, upon completion of the Eleventh Regular Session of the WCPFC, which is scheduled to

occur in December 2014, NMFS would determine whether this criterion has been met, and if it finds that it has, NMFS would issue a Federal Register notice announcing that these elements of this proposed rule are in effect. Again, the prohibitions on the use of FADs from July through September of 2015 would not be contingent on NMFS issuing a subsequent Federal Register notice.

NMFS proposes to implement the first of the two FAD-related options in CMM 2013-01 because it believes it is the more cost-effective of the two options, taking into account the objectives of the CMM, the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects. The expected environmental and economic effects of both options are described in the SEA, RIR, and IRFA prepared for this proposed action.

Under this proposed rule, the definition of a FAD for the purpose of the FAD restrictions would remain as it is in existing regulations (50 CFR 300.211): It means “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.” Although the definition of a FAD does not include a vessel, some of the proposed prohibitions apply to setting on fish that have aggregated in association with a vessel, as described further below.

If NMFS determines that the proposed limit of 3,061 FAD sets is expected to be reached by a specific future date in 2015, NMFS would issue a notice in the Federal Register announcing that the use of FADs in the Convention Area between the latitudes of 20° North and 20° South will be prohibited starting on that specific future date and ending at the end of December 31, 2015. NMFS would issue the notice at least seven calendar days before the effective date of the

FAD closure to provide fishermen advance notice of the closure.

The specific activities that would be prohibited in the Convention Area between the latitudes of 20° North and 20° South during the proposed FAD closure periods (i.e., January and February and July through September, as well as any period after which the FAD set limit has been reached, through December 31, 2015) would remain as they are in existing regulations (50 CFR 300.223(b)): It would be prohibited to:

- (1) Set a purse seine around a FAD or within one nautical mile of a FAD;
- (2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel;
- (3) Deploy a FAD into the water;
- (4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety, and a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water; and
- (5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental



damage: submerge lights under water; suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment; or direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

For the purpose of estimating and projecting FAD sets with respect to the proposed limit of 3,061 FAD sets, NMFS would count FAD sets using the best information available. Under existing requirements, vessel owners and operators must maintain in their catch report forms (logbooks known as Regional Purse Seine Logsheets, or RPLs) information about the type of each set that is made, including whether it was made on a FAD. However, NMFS does not receive that logbook information until after the vessel returns to port, and it takes additional time for NMFS to review the information and make it available for analysis. Consequently, it would be difficult for NMFS to estimate and project FAD sets with respect to the proposed limit in a timely and reliable manner. For that reason, this proposed rule would establish an additional reporting requirement for U.S. purse seine vessel owners and operators. Within 24 hours of the end of each day while the vessel is at sea in the Convention Area, the owner or operator would have to report to NMFS how many sets were made on FADs during that day. The NMFS Pacific Islands Regional Administrator would determine the manner and format of these reports, and instruct vessel owners and operators accordingly. In doing so, NMFS would take advantage of, and allow for the use of, the most cost-efficient technologies available on the affected purse seine vessels, such as email or other electronic reporting means.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY section of the preamble and in other sections of this SUPPLEMENTARY INFORMATION section of the preamble. The analysis follows:

##### Estimated Number of Small Entities Affected

Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide.

This proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the

Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 40, which is the maximum number of licenses available under the SPTT (excluding joint-venture licenses, of which there are five available under the SPTT, none of which have ever been applied for or issued).

Based on (limited) available financial information about the affected fishing vessels and the SBA's small entity size standards for commercial finfish harvesters, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. As indicated above, there are currently 40 purse seine vessels in the affected purse seine fishery. Neither gross receipts nor ex-vessel price information specific to the 40 vessels are available to NMFS, so average annual receipts for each of the 40 vessels during the last 3 years for which reasonably complete data are available (2010-2012) were estimated as follows: The vessel's reported retained catches of each of skipjack tuna, yellowfin tuna, and bigeye tuna in each year was multiplied by an indicative Asia-Pacific regional cannery price for that species and year (developed by the Pacific Islands Forum Fisheries Agency and available at <https://www.ffa.int/node/425#attachments>). The products were summed across species for each year, and the sums were averaged across the 3 years. The estimated average annual receipts for each of the 40 vessels were less than \$20.5 million.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would establish restrictions on the use of FADs and an additional reporting requirement, as described earlier in the SUPPLEMENTARY INFORMATION section of the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible:

## 1. FAD Restrictions

The proposed prohibitions on setting on FADs and on fish aggregating in association with fishing vessels (collectively called “FAD prohibitions” or “FAD restrictions;” note that the data on FAD sets presented here do not include sets made on fish aggregating in association with fishing vessels, but the number of the latter type of sets is small) in January-February and July-September of 2015, and for the remainder of 2015 if and after the limit of 3,061 FAD sets is reached, would substantially constrain the manner in which purse seine fishing could be conducted during those periods; vessels would be able to set only on free, or “unassociated,” schools.

The likelihood of reaching the 3,061 FAD set limit depends on the amount of fishing effort that will be available to the fleet in 2015. This will largely depend on outcome of the ongoing renegotiation of the South Pacific Tuna Treaty, which cannot be predicted. As an indicative example, if the fleet makes 51 percent of its sets on FADs during periods when FAD sets are allowed, as it did in 2010-2011, and if fishing effort is evenly distributed through the year, then the FAD set limit would be reached if the total number of sets made in 2015 were to exceed 10,300. Assuming that approximately one set can be made per fishing day, on average (the ratio in 2010-2011 was approximately 0.93 sets per fishing day), that level is slightly greater than the total number of sets available to the fleet in 2014. Thus, the likelihood of the 3,061 FAD set limit being reached appears to be moderate if the total fishing effort available in 2015 is similar to the total fishing effort available in 2014.

The costs associated with the FAD restrictions cannot be quantitatively estimated, but the fleet’s historical use of FADs can help give a qualitative indication of the costs. In the years 1997-2010, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less

than 30 percent in some years to more than 90 percent in others. Thus, the importance of FAD sets in terms of profits appears to be quite variable over time, and is probably a function of many factors, including fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (e.g., FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Thus, the costs of complying with the FAD restrictions would depend on a variety of factors.

In 2010-2011, the last 2 years for which complete data are available and for which there was 100 percent observer coverage, the U.S. WCPO purse seine fleet made about 38 percent of its sets on FADs. During the months when setting on FADs was allowed, the percentage was about 51 percent. The fact that the fleet has made such a substantial portion of its sets on FADs indicates that prohibiting the use of FADs for five months each year (and possibly longer if the 3,061 FAD set limit is reached) could bring substantial costs and/or revenue losses.

To help mitigate these impacts, vessel operators might choose to schedule their routine vessel and equipment maintenance during the FAD prohibition periods. Similarly, the competitive FAD set limit could give vessel operators an incentive to fish relatively hard early in the year when FAD sets are allowed in order to take best advantage of the collective limit before it is reached. Such a “race-to-fish” effect could cause vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel. It also is conceivable that some vessels might choose not to fish at all during the prohibition periods rather than fish without the use of FADs. Observations

of the fleet's behavior in 2009-2012 do not suggest that any of these responses occurred to an appreciable degree. The proportion of the fleet that fished during the two- and three-month FAD prohibition periods of 2009-2012 did not appreciably differ from the proportion that fished during the same months in the years 1997-2008, when no FAD prohibition periods were in place. However, the five-month FAD closure and 3,061 FAD set limit proposed in this rule would be more severe than the two- and three-month closures of 2009-2012, so it is difficult to predict how vessel owners and operators would respond.

## 2. Daily FAD Reporting Requirement

This proposed additional reporting requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. Within 24 hours of the end of each day while a purse seine vessel is at sea in the Convention Area, the owner or operator would have to report to NMFS how many sets were made on FADs during that day. The report would be submitted to NMFS via email or other electronic means. The communication costs for the additional reporting requirement are expected to be approximately \$1 per report. Each report would require approximately 10 person-minutes to complete and submit. Assuming labor costs of about \$26 per person-hour, and, based on the fleet's fishing patterns in 2010-2011, approximately 255 days at sea per vessel per year, the total annual communication costs for a vessel would be about \$255, and the total annual labor costs would be about \$1,105, for a total annual cost of about \$1,360.

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations, with the exception of a Federal regulation that duplicates to some extent the proposed daily FAD reporting requirement. Existing regulations at 50 CFR 300.34 require that a record of catch, effort and other information must be maintained on board vessels licensed under the SPTA, on catch report forms known as Regional Purse Seine Logsheets, or RPLs. The RPLs must be submitted to NMFS within two days of a vessel reaching port. The RPLs include the information that would be required to be reported under this proposed rule; that is, how many FAD sets were made on a given day. As explained earlier in the preamble, the timing of the RPL requirement is such that it would not provide NMFS with the information it needs to estimate and project FAD sets with respect to the proposed limit in a timely and reliable manner. For that reason, NMFS is proposing a reporting requirement that is duplicative in terms of the substance— but not the timing—of one element of the existing RPL reporting requirement.

#### Alternatives to the Proposed Rule

NMFS considered two alternatives to the proposed FAD restrictions, and one alternative to the proposed daily reporting requirement.

The first alternative for the FAD restrictions would establish a three-month FAD closure period (instead of five months) and a FAD set limit of 2,202 (instead of 3,061) for 2015. The months of the FAD closure period would be July through September. This alternative is based on the second of the two options available to the United States under CMM 2013-01, as described above in the SUPPLEMENTARY INFORMATION section of this preamble. The [compliance burden] associated with this alternative would depend, like that of the proposed action, on the amount of fishing effort that will be available to the fleet in 2015. That, in turn, depends to a

large extent on the outcomes of ongoing negotiations under the SPTT, which cannot be predicted with any certainty. If the amount of available fishing effort is relatively high, this alternative would likely bring greater economic impacts than the proposed action, and the reverse would be the case for relatively low levels of total available fishing effort. For example, if the fleet makes 51 percent of its sets on FADs during periods when FAD sets are allowed, as it did in 2010-2011, and if fishing effort is evenly distributed through the year, the “breakeven” point between this alternative and the proposed action would be 7,402 total sets. This is substantially less than the amount of fishing effort that is expected to be available to the fleet in 2014. Again, the amount of fishing effort available to the fleet in 2015 cannot be predicted with any certainty, but NMFS tentatively anticipates that the amount will not be substantially less than the amount available in 2014. If that turns out to be the case, this alternative would likely bring greater costs to affected entities than the proposed action, and for that reason it is not preferred.

The second alternative for the FAD restrictions would be the same as the proposed restrictions except that it would not be prohibited to set on fish that have aggregated in association with a vessel, provided that the vessel is not used in a manner to aggregate fish (versus a FAD, which by definition does not include a vessel). This would be less restrictive and thus presumably less costly to affected purse seine fishing businesses than the proposed requirements. The number of such sets made historically has been relatively small, averaging about four per year for the entire fleet from 1997 through 2010, according to data recorded by vessel operators in logbooks (examination by NMFS of observer data from selected years indicates a somewhat higher number than the number reported by vessel operators, so vessel logbook data might underestimate the actual number, but the number is still small in comparison to FAD sets). Therefore, the degree of relief in compliance costs of allowing such sets for four



months each year would be expected to be relatively small. NMFS believes that this alternative would not serve CMM 2013-01's objective of reducing the fishing mortality rates of bigeye tuna and young tunas through seasonal prohibitions on the use of FADs as well as would the proposed rule. For that reason, this alternative is not preferred.

The alternative for the daily FAD reporting requirement would be the same as the proposed requirement except that it would apply only whenever a vessel is on a fishing trip in the Convention Area, rather than whenever a vessel is at sea (whether it be fishing or transiting) in the Convention Area. This alternative would relieve vessel owners and operators of the reporting requirement when the vessel is transiting without fishing, which would presumably result in lesser compliance costs. However, NMFS does not have information that allows it to readily discern on a near real-time basis whether a given vessel, when at sea, is on a fishing trip or not. Thus, NMFS would have a lesser ability to estimate and project FAD sets in a timely and reliable manner than it would under the proposed rule, and for that reason, this alternative is not preferred.

The alternative of taking no action at all is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

#### Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the daily report of how many FAD sets were made is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see ADDRESSES), and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: October 2, 2014.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.218, paragraph (g) is added to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

\* \* \* \* \*

(g) Daily FAD reports. The owner or operator of any fishing vessel of the United States equipped with purse seine gear must, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, report to NMFS, in the format and manner directed by the Pacific Islands Regional Administrator, how many purse seine sets were made on FADs during that day.

3. In § 300.222, paragraph (rr) is added to read as follows:

§ 300.222 Prohibitions.

\* \* \* \* \*

(rr) Fail to submit, or ensure submission of, a daily FAD report as required in §300.218(g).

4. In § 300.223, paragraph (b) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

\* \* \* \* \*

(b) Use of fish aggregating devices. (1) During the periods specified in paragraph (b)(2) of this section, owners, operators, and crew of fishing vessels of the United States shall not do any of the activities described below in the Convention Area in the area between 20° N. latitude

and 20° S. latitude:

- (i) Set a purse seine around a FAD or within one nautical mile of a FAD.
- (ii) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.
- (iii) Deploy a FAD into the water.
- (iv) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:
  - (A) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and
  - (B) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.
- (v) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:
  - (A) Submerge lights under water;
  - (B) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(C) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through September 30, 2015; and

(ii) During each the periods described below, but only after NMFS has issued a notice in the Federal Register announcing that the requirements of paragraph (b)(1) of this section are effective during the following periods:

(A) From January 1 through February 28, 2015; and

(B) During any period specified in a Federal Register notice issued by NMFS announcing that NMFS has determined that U.S. purse seine vessels have collectively made, or are projected to make, 3,061 FAD sets in the Convention Area in the area between 20° N. latitude and 20° S. latitude in 2015. The Federal Register notice will be published at least seven days in advance of the start of the period announced in the notice. NMFS will estimate and project the number of FAD sets using vessel logbooks, and/or other information sources that it deems most appropriate and reliable for the purposes of this section.

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